

**Response**

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Serial No.: 09/732,236

Confirmation No.: 9502

Filed: December 7, 2000

For: NEAR-INFRARED DISGUISE DETECTION

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**Remarks**

The Office Action mailed August 1, 2003 has been received and reviewed. No claims have been amended or cancelled. Therefore, claims 1-37 are pending in the current application. Reconsideration and withdrawal of the rejections are respectfully requested in view of the following remarks.

**Double Patenting Rejection**

Claims 1-37 were provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-37 of co-pending application no. 10/308,465. Claims 1-37 of U.S. Application Serial No. 10/308,465 were cancelled at the time of filing the application as indicated in the "Request for Filing a Continuation Application Under Rule §1.53(b) and Preliminary Amendment". As such the double patenting rejection is obviated in view thereof.

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**The 35 U.S.C. §102 Rejection**

The Examiner rejected claims 1-16, 14-19, 21, 23, 27, 29 and 33-37 under 35 U.S.C. §102(b) as being anticipated by Hacskaylo (U.S. Patent No.4,500,784). Applicant respectfully traverses this rejection.

For a claim to be anticipated under 35 U.S.C. § 102(b), each and every element of the claim must be found in a single prior art reference. *See* M.P.E.P. § 2131.

Claim 1 describes a method for use in detection of a person disguised with one or more artificial materials. The method includes detecting reflection from at least one portion of a head of a human body in at least a portion of an upper band of the near infrared spectrum. The presence of an artificial material associated with the head of the human body is determined based on the detected reflection.

Hacskaylo describes, in column 1, lines 60-64, "a technique for automatically detecting a human body when a portion of the body (skin) is exposed to an illuminator-detector device which detects and discriminates the near-infrared reflection bands of the skin." Tables I and II do nothing more than provide reflection and detection properties for skin of a human body. In

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other words, Hacskaylo provides nothing more than a way to detect the existence or non-existence of skin in a scene (i.e., using three reflected bands in the near-infrared region).

Hacskaylo does not describe the elements of claim 1. For example, although Hacskaylo describes detecting reflection from skin of a human body, Hacskaylo does not necessarily describe detecting reflection from at least one portion of a head of a human body in at least a portion of an upper band of the near infrared spectrum. In other words, Hacskaylo does not focus on the head of the human body. As such, and further, Hacskaylo does not describe anything that is comparable to determining the presence of an artificial material associated with the head of the human body based on the detected reflection as described in claim 1. In fact, Hacskaylo does not describe the determination of the presence of an artificial material at all based on the detected reflection. Rather, only detecting a human body when a portion of the skin is exposed is described in Hacskaylo. As such, it would appear that Hacskaylo would be unable to detect whether or not a person was disguised with one or more artificial materials as is provided for in claim 1.

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For at least the above reasons, claim 1 is not anticipated by Hacskaylo. Further, as claims 2-6 and 14-15 depend on claim 1, either directly or indirectly, they include the limitations thereof. As such, these claims are also not anticipated by Hacskaylo for the same reasons as provided above and by reason of their own limitations.

For example, Hacskaylo does not describe detecting reflection from a hair portion of the head of the human body. Further, for example, Hacskaylo does not describe use and control of an illumination source as described in claim 15. Further, the Examiner only objected to claim 28 which describes similar system components corresponding to the method of claim 15. As Hacskaylo does not show such components, claim 15 is believed to be in allowable condition as well.

The Examiner indicates that the basis for rejection of claims 16-19, 21, 23, 27, 29, and 33-37 is similar to the analysis for the other rejected claims. As such, Applicant presents the same reasons as described above with respect to claims 1-6 and 14-15 and argues that these

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additionally rejected claims are also not anticipated by Hacskaylo for the same reasons as provided above and by reason of their own limitations.

Further, it is noted that claim 23 is believed to be in allowable condition, not only based on the remarks provided above, but also due to the fact that claim 23 is dependent on claim 22 which has only been objected to by the Examiner.

It is respectfully submitted that the rejection of claims 1-16, 14-19, 21, 23, 27, 29 and 33-37 be withdrawn in view of at least the above remarks.

**The 35 U.S.C. §103 Rejection**

The Examiner rejected claims 7-13, 20, 25 and 26 under 35 U.S.C. §103(a) as being unpatentable over Hacskaylo (U.S. Patent No. 4,500,784) in view of Smoot (U.S. Patent No. 5,940,139). Applicants respectfully traverse this rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, ~~there must be some suggestion or motivation, either in the references themselves or in the~~ knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. *See* M.P.E.P. § 2143.

Claims 7-13, 20, and 25-26 depend on independent claim 1 or 16, either directly or indirectly. As such, they each include the limitations thereof. Hacskaylo, as described above with respect to the anticipation rejection of claims 1 and 16, does not describe all the limitations of such independent claims. Smoot was cited by the Examiner to provide elements of the dependent claims that the Examiner indicated were missing from Hacskaylo. Smoot describes only video extraction techniques and does nothing to cure the lack of those elements missing in Hacskaylo. Therefore, the prior art references cited by the Examiner do not teach or suggest all the limitations of claims 7-13, 20, 25 and 26 and such claims are not obvious in view of the cited references.

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Further, it is noted that claims 25-26 are believed to be in allowable condition, not only based on the remarks provided above, but also due to the fact that such claims are dependent on claim 22 which has only been objected to by the Examiner.

It is respectfully submitted that the rejection of claims 7-13, 20, and 25-26 be withdrawn in view of at least the above remarks.

**Allowable Subject Matter**

Applicant further acknowledges that claims 22, 24, 28, and 30-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, Applicant at this time has not rewritten such claims in independent form as it is believed that such claims are dependent from claims that are in allowable condition.

Further, Applicant notes that because claims 23 and 25-26 are dependent upon an objected to claim 22, that such claims are also in allowable condition by reason of their dependency.

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**Summary**

It is respectfully submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicant's Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for  
**PAVLIDIS**

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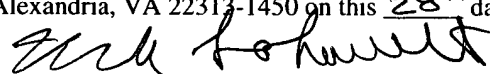
28 Oct 2003  
Date

By:   
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**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that the Transmittal Letter and the paper(s) and/or fee(s), as described hereinabove, are being deposited with the United States Postal Service as first class mail, in an envelope addressed to: Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 28<sup>th</sup> day of October, 2003.

By:   
Name: Mark J. Gebhardt

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